



# **National Guard**

## **Homosexual Conduct Policy**




**“Don’t Ask, Don’t Tell, Don’t  
Harass”**





# Army and Air National Guard Homosexual Conduct Policy

- Directed by the chief, NGB
  - Implements DoD policy
  - DoD policy is a balance between the legal prohibition of homosexual conduct and the privacy rights of soldiers and airmen
  - The army and air national guard follow the DoD policy as well as their respective service's policy
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# What Does the Law Say?

“The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”

Title 10 § 654 (a) (15)






# DoD Directed Policy Changes

- Installation-level SJA's will consult senior legal officers at a higher HQ prior to the initiation of an investigation
  - Initiation of substantial inquiry into admission of homosexuality for the purpose of separation will be made at the secretarial level
  - The IG will inspect homosexual conduct policy training
  - A “substantial inquiry” is one in which questioning of witnesses extends beyond the member (or the person reporting the statement), persons named by the member and the supervisory chain of command
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# The Law and Policy in Everyday Language

- Don't ask, don't tell (applicants are not asked their sexual orientation and are informed of the existing law and policy concerning homosexuality)
  - Homosexual conduct is:
    - **Statement** = admission of homosexuality
    - **Act** = committing a homosexual act
    - **Marriage** = marrying/attempting to marry a person of same sex
  - Zero tolerance for harassment
  - Train the force
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# What Does “Don’t Ask” Mean?

- Applicants for enlistment will not be asked nor required to reveal their sexual orientation
  - Applicants for enlistment will not be asked if they have engaged in homosexual conduct
  - While on duty, soldiers will not be asked by anyone about their sexual orientation or conduct unless there is credible information of homosexual conduct
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# What Does “Don’t Tell” Mean?

- “Don’t tell” is the opposite side of the coin from “don’t ask.”
  - Personnel should not disclose or discuss their sexual orientation or conduct.
  - If a member admits to being homosexual in violation of the “don’t tell” part of the policy, the commander will begin the process to determine if credible information exists which would warrant separation.
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# Zero Tolerance for Harassment

- Definition: derogatory, persistent, threatening or annoying behavior directed toward an individual or group
  - Possible types of harassment
    - Verbal (on or off duty)
    - Graffiti
    - Anonymous threats
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# Commanders Inquiry

- Only commanders can initiate fact finding inquiries
    - Can conduct inquiry personally or through an appointee (in writing)
    - The person to whom a report of homosexuality is made must be careful not to engage in an inquiry prior to the time the commander appoints
    - Not every case requires an inquiry
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# Commanders Inquiry

- Commanders cannot initiate an inquiry solely to determine sexual orientation
  - A prerequisite to an inquiry is “credible information” (a reasonable belief) that a basis for discharge exists
  - The policy creates no substantive or procedural rights for the individual member
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# What Are Grounds for Inquiry?

- Credible information must exist.
  - A commander must have a reasonable belief that a member has:
    - Engaged or solicited to engage in a homosexual act
    - Stated that he or she is a homosexual or otherwise indicated a propensity to engage in homosexual conduct
    - Married or attempted to marry a person of the same sex
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# Commanders Inquiry

- Statements cases:
    - Prior to initiation of a “substantial inquiry” in a statements case, the inquiry must be approved through the Under Secretary of the Air Force or the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA M&RA)
    - A “substantial inquiry” is one in which questioning of witnesses extends beyond the member (or the person reporting the statement), persons named by the member and the supervisory chain of command
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# Commanders Inquiry

- National Guard Bureau policy is:
    - Prior to initiating an inquiry into alleged homosexual conduct, commanders, through their chain of command, must coordinate with the adjutant general or delegate
    - Commanders must seek the advice of their Staff Judge Advocate
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# What Is Credible Information?

- A statement by a reliable person that a member has:
    - Engaged or solicited to engage in a homosexual act
    - Stated that he or she was homosexual
    - Stated that he or she had married or attempted to marry a member of the same sex.
  - A statement by a reliable person that they had observed a member admitting to or engaging in homosexual conduct.
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# What Is Not Credible Information?

- Rumors that a member is homosexual
  - Others' opinions that a member is homosexual
  - Going to a homosexual bar, reading homosexual publications, associating with known homosexuals or marching in homosexual rights rallies in civilian clothes
  - Reports of being harassed shall not by itself constitute credible information justifying the initiation of an investigation.
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# Full Time Values - Part Time Careers

- Actions in the community may affect morale, good order and discipline, and unit cohesion
- May be basis for appropriate action by local command
- Sexual orientation is not a bar to continued service unless manifested by “homosexual conduct.”







# Summary

## What Is Protected

- Going to a homosexual bar, reading homosexual publications, associating with known homosexuals or marching in homosexual rights rally in civilian clothing
- Reporting threats or accusations of being homosexual





# Summary

## What Is Prohibited

### (S - A - M)

- Statement
- Act
- Marriage





# What Can a Member Do If Threatened, Harassed or Accused of Being Homosexual?

- Report harassment at once to the commander
- Commanders will take appropriate action to protect the safety of members who report threats or harassment





# Who Can a Member Talk With Confidentially?

- Chaplain





# Summary

The challenge to all personnel is to comply with the law that prohibits homosexual conduct while at the same time respecting the privacy and dignity of every member.





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